cf 100/-

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BEFORE THE HON'BLE HIGH COURT OF CHATTISGARH AT BILASPUR.

W P NO. 59/2003 /2002

Steel Authority of India Ltd
Through: Managing Director
Bhilai Steel Plant,
Bhilai
Dist Durg (CG) .. PETITIONER

Versus

1. Member Judge
Industrial Court
A/16, Krishna Sadan
Shanker Nagar
Raipur. (CG)

2. Presiding Officer
Labour Court
Durg. (CG)

3. Shri Kundan,
S/o Shri Durla,
Ex-BSP NMR Employee,
Qr. No. 30D, Sector 9
Bhilai. Dist: Durg (CG) .. RESPONDENTS

Shri K. Krishnan
Adv. 10.02

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA FOR ISSUE OF WRIT OF MANDAMUS CERTITORY OR ORDER OR DIRECTION OF LIKE NATURE.

(260)

AFR

15-12-06

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.59 OF 2003

Steel Authority of India Ltd., through Managing Director,
Bhilai Steel Plant, Bhilai

versus

Member Judge, Industrial Court and others

ORDER

Post for 15-12-2006

Sd/-
Satish K. Agnihotri
Judge

(261)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SINGLE BENCH : HON'BLE MR. SATISH K. AGNIHOTRI, J.

WRIT PETITION NO.59 OF 2003

Petitioner	:	Steel Authority of India Ltd., through Managing Director, Bhilai Steel Plant, Bhilai
	versus	
Respondents	:	Member Judge, Industrial Court and others

Present : Mr. N.K.Vyas, counsel for the petitioner.
Mr. Anoop Majumdar, counsel for respondent No.3.

ORDER

(Passed on 15th Day of December, 2006)

By this petition filed under Articles 226/227 of the Constitution of India, the petitioner impugns the order dated 10-7-2002 (Annexure P-1) passed by the Industrial Court, Bench at Raipur and the order dated 28-11-1996 (Annexure P-2) passed by the Labour Court, Durg.

2. Respondent No.3 filed an application before the Labour Court on 24-8-1981 (Annexure P-3) claiming reappointment and back wages pleading mainly that he was enrolled as Casual Mazdoor in Blooming and Billet Mill, Bhilai Steel Plant, Bhilai in the year 1974. He was absorbed as N.M.R. (Nominal Muster Roll) Mazdoor in Power Plant

with effect from 24-7-1978 and continued upto 7-3-1980. According to the worker, i.e., respondent No.3, he was retrenched by the petitioner on 7-3-1980 due to closure of work. Juniors to him in the N.M.R. have been either taken in regular service or are working as N.M.R. worker in Power Plant and other departments of Bhilai Steel Plant.

3. The petitioner filed a written statement before the Labour Court dated 30-4-1982 (Annexure P-4) denying the case of respondent No.3. The Labour Court, vide its order dated 21-8-1982 (Annexure P-5), rejected the application of respondent No.3 dated 24-8-1981 (Annexure P-3) treating as barred by limitation. Respondent No.3 filed a review application dated 2-9-1982 (Annexure P-6) for review of the order dated 21-8-1982, which was also rejected by the Labour Court, vide its order dated 18-10-1982 (Annexure P-7).

4. Being aggrieved, respondent No.3 filed an appeal before the Industrial Court, Indore, challenging the order dated 21-8-1982 (Annexure P-5) and the order dated 18-10-1982 (Annexure P-7). The Industrial Court, Indore, vide its order dated 21-3-1985 (Annexure P-8), rejected the appeal against the order dated 21-8-1982 (Annexure P-5), and against the order dated 18-10-1982 (Annexure P-7), the appeal was partly allowed and the matter was remanded back to the Labour Court for a fresh decision on the review application of respondent No.3 dated 2-9-1982 (Annexure P-6).

5. During pendency of the review application before the Labour Court, respondent No.3 filed another application dated 15-4-1991 (Annexure P-9) before the Labour Court claiming reappointment

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as N.M.R. worker. The petitioner submitted a written statement dated 10-7-1991 (Annexure P-10) denying the case of respondent No.3.

6. The Labour Court, vide its impugned order dated 28-11-1996 (Annexure P-2), allowed the application of respondent No.3 dated 15-4-1991 (Annexure P-9) and directed the petitioner to reinstate respondent No.3 as N.M.R. worker.

7. Being aggrieved by the said order of the Labour Court, the petitioner filed an appeal before the Industrial Court, Bench at Raipur on 27-12-1996 (Annexure P-11). The Industrial Court, Bench at Raipur allowed the appeal of the petitioner by order dated 31-1-2000 (Annexure P-12) with an observation that the petitioner should consider the case of respondent No.3 sympathetically for re-employment.

8. In the meantime, the Labour Court referred the matter to a Division Bench of the Industrial Court, Indore for decision on a question of law with regard to the review application pending before the Labour Court. The Division Bench of the Industrial Court, Indore, vide its order dated 10-3-2000 (Annexure P-13), decided the reference and directed the Labour Court to decide the review application as per earlier order of the Industrial Court, Indore dated 21-3-1985 (Annexure P-8), in accordance with law.

9. Against the order dated 31-1-2000 (Annexure P-12) passed by the Industrial Court, Bench at Raipur, respondent No.3 filed a review application. The Industrial Court, Bench at Raipur allowed the review application of respondent No.3 by order dated 5-1-2002

(Annexure P-14) observing that the order dated 31-1-2000 (Annexure P-12) passed in the appeal filed by the petitioner on 27-12-1996 (Annexure P-11) stands stayed/rejected for the time being, and fixed the said appeal of the petitioner for re-hearing.

10. After re-hearing, the Industrial Court, Bench at Raipur, by the impugned order dated 10-7-2002 (Annexure P-1), rejected the said appeal of the petitioner, which was earlier filed on 27-12-1996 for quashing the impugned order dated 28-11-1996 (Annexure P-2).

11. Having regard to the admitted facts of the case that respondent No.3 was employed as daily rated worker on Nominal Muster Roll and the Labour Court has not recorded a clear finding that respondent No.3 had worked for more than 240 days, respondent No.3 has no right to the post as the appointment of respondent No.3 was not in accordance with the constitutional scheme of employment or under any rules framed under proviso to Article 309 of the Constitution of India inviting applications from all the eligible candidates.

12. A Constitution Bench of the Supreme Court has settled the legal position with regard to the right of the daily wager, *ad hoc*, casual, temporary employees not appointed in accordance with the constitutional scheme of employment and not in accordance with law.

13. In the case of ***Secretary, State of Karnataka and others*** vs. ***Umadevi (3) and others***[1], the Supreme Court observed as under :-

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"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain – not at arm's length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible."

"47. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in cases concerned, in consultation with the Public Service Commission."

14. Therefore, the reliance placed by learned counsel appearing for respondent No.3 on the decision in the case of ***Central Bank of India*** **vs.** ***S. Satyam and others***[2], wherein the Supreme Court has held that all cases of retrenchment shall be governed under the

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provisions of Section 25H of the Industrial Disputes Act, 1947, may not be applicable to the facts of the present case.

15. The Supreme Court, in the case of ***Mineral Exploration Corpn. Employees' Union*** vs. ***Mineral Exploration Corpn. Ltd. and another***[3], has directed the Industrial Tribunals to decide the claim of the workmen strictly in accordance with and in compliance with the directions given in the judgment by the Constitution Bench in the case of ***Secretary, State of Karnataka and others*** vs. ***Umadevi (3) and others*** (Supra).

In view of aforementioned reasons, it is not necessary to decide the question of applicability of principle of res judicata in the present case.

16. In the result, in view of the foregoing, this petition is allowed. The impugned orders dated 10-7-2002 (Annexure P-1) passed by the Industrial Court, Bench at Raipur and dated 28-11-1996 (Annexure P-2) passed by the Labour Court, Durg are quashed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

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1 (2006) 4 SCC 1
2 1996 (II) LLJ 820
3 (2006) 6 SCC 310